

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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UNITED STATES OF AMERICA

Plaintiff,

v.

CAPITAL TAX CORPORATION,  
STEPHEN J. PEDI, and WILLIAM LERCH,

Defendants,

and

FRANK PEDI, brother of STEPHEN J. PEDI,

Rule 19 Defendant

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Civil Action No. 04-C-4138

Judge George M. Marovich

Magistrate Judge Michael T. Mason

**CONSENT DECREE BETWEEN PLAINTIFF UNITED STATES**  
**AND DEFENDANTS STEVE PEDI AND FRANK PEDI**

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## **I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed an amended complaint in this matter pursuant to Section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended ("CERCLA"), and Sections 3304 and 3306 of the Federal Debt Collection Procedures Act ("FDCPA"), 28 U.S.C. §§ 3304 and 3306, seeking (i) reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the National Lacquer and Paint Superfund Site in Chicago, Illinois ("the Site"); (ii) penalties and punitive damages for failure to comply with EPA administrative orders related to the Site; and (iii) rescission of certain fraudulent transfers to the extent necessary to satisfy defendants' obligations to pay response costs, penalties, and punitive damages.

B. On January 4, 2007, this Court granted the United States' motion for summary judgment on the CERCLA response cost liability of Defendant Steve Pedi, among others, and nothing in this Consent Decree vacates or otherwise changes the legal effect of that decision. The remaining issues in the United States' amended complaint have yet to be resolved. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the amended complaint.

C. The United States has reviewed the Financial Information submitted by Steve Pedi to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendants are able to pay the amounts specified in Section VI.

D. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

#### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA, the FDCPA, or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statutes or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.
- e. "Effective Date" shall mean the date that this Consent Decree is entered by the Court.
- f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.
- g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- h. "FDCPA" shall mean the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001, *et seq.*
- i. "Financial Information" shall mean those financial documents identified in Appendix B.
- j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- k. "Listing Contract" shall mean a contract to obtain the services of a real estate dealer, broker, or agent to sell a designated parcel, or multiple parcels, of real property.
- l. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- m. "Parties" shall mean the United States and Settling Defendants.
- n. "Plaintiff" shall mean the United States.

o. "Property" shall mean that portion of the Site owned by Steve Pedi or a trust with Steve Pedi as the beneficial owner and subject to a federal lien pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l).

p. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

q. "Removal Action" shall mean the removal action beginning on July 31, 2003 and for which on-site work was completed around June 2004.

r. "Removal Action Costs" shall include all costs incurred by the United States related to the Removal Action, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, indirect costs, and enforcement costs associated with pursuing the claims asserted in the amended complaint referenced in Section I of this Consent Decree.

s. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

t. "Settling Defendants" shall mean Steve Pedi and Frank Pedi.

u. "Site" shall mean the National Lacquer and Paint Superfund site, encompassing approximately 1 acre, located at 7411 to 7431 South Green Street, Chicago, Illinois and generally shown on the map included in Appendix A.

v. "Settlement Amount" shall mean \$330,000 plus an additional sum for Interest on that amount calculated from a date 30 days after the Effective Date through the date of payment.

w. "State Partition Action" shall mean the case captioned *William Lerch v. Frank Pedi, et al.*, with the case number 04CH1792 pending in the 12<sup>th</sup> Judicial Circuit of Illinois and reflected in the Complaint for Partition attached as Appendix C.

x. "State Partition Action Funds" shall mean any funds received by either or both Settling Defendant as a result of a settlement, judicial decision, or other event in the State Partition Action.

y. "Transferred Properties" shall mean the following five parcels of real property for which the United States has alleged that Steve Pedi fraudulently transferred his interest to Frank Pedi:

(i) 25640 West 119th Street, Plainfield, Illinois

(ii) 462 Repton Road, Riverside, Illinois

(iii) 2412 South 9th Avenue, Broadview, Illinois

(iv) 7221 West Roosevelt Road, Forest Park, Illinois

(v) 22 Tulip, Unit 310, Cocoa Beach, Florida

z. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

## **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make cash payments to resolve their liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section IX, and subject to the Reservations of Rights by United States in Section X.

## **VI. PAYMENTS**

5. On or before December 31, 2007, Settling Defendants shall pay to the EPA \$330,000 plus an additional sum for Interest on that amount calculated from a date 30 days after the Effective Date through the date of payment ("Settlement Amount"), as follows:

a. Within 10 days of Settling Defendants' receipt of any State Partition Action Funds, Settling Defendants shall pay to the EPA at least \$250,000; and

b. Settling Defendants shall pay to the EPA any difference between the Settlement Amount and the amount paid pursuant to Paragraph 5.a on or before December 31, 2007. Interest shall continue to accrue on the unpaid portion of the Settlement Amount through the date of the final payment made pursuant to this Paragraph. In addition to the other requirements of this Paragraph, within 30 days of Settling Defendants' receipt of any State Partition Action Funds, Settling Defendants shall either (i) make any additional payment necessary under this Subparagraph; or (ii) deliver to EPA a Listing Contract with a broker, dealer, or agent who usually deals with the type of property to be sold to offer for sale one or more of the Transferred Properties. Settling Defendants shall use "best efforts" to sell the Transferred Property listed for sale and shall make any payment necessary under Subparagraph 5.b.ii within 10 days of receiving the proceeds from such sale.

c. For the purpose of Subparagraph 5.b, "best efforts" shall include, but not be limited to:

- (i) responding to the reasonable inquiries of prospective buyers;
- (ii) maintaining the property in a condition suitable for exhibition to prospective buyers;
- (iii) allowing the property to be shown at all reasonable times; and
- (iv) assisting the broker, dealer, or agent in any other reasonable way requested in an effort to sell the property at the highest price possible and as quickly as possible.

d. An inability to sell one or more of the Transferred Properties shall not delay or excuse the Settling Defendants' obligation to make full payment of the Settlement Amount on or before December 31, 2007, and shall not provide a basis for relief from this Consent Decree under Fed. R. Civ. P. 60(b).

6. All payments shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2004V01206, the EPA Region and Site Spill ID Number B57L, and DOJ

Case Number 90-11-2-08218. Payments shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Illinois following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. At the time of each payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions) and to

Financial Management Officer  
U.S. Environmental Protection Agency  
Mail Code MF-10J  
77 West Jackson Blvd.  
Chicago, IL 60604

8. The total amount of each payment to be paid pursuant to Paragraph 5 shall be deposited in the EPA Hazardous Substance Superfund. The total amount of each payment to be paid pursuant to Paragraph 5 shall go toward the reimbursement of the United States' Removal Action Costs.

#### **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

9. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraph 5 by the required due date, all remaining payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

10. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 9, \$500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number B57L, and DOJ Case Number 90-11-2-08218, and shall be sent to:

U.S. Environmental Protection Agency, Region 5  
Program Accounting and Analysis Branch  
P.O. Box 70753  
Chicago, IL 60673

c. At the time of each payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions) and to

Financial Management Officer  
U.S. Environmental Protection Agency  
Mail Code MF-10J  
77 West Jackson Blvd.  
Chicago, IL 60604

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to, costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

#### **VIII. RELEASE OF NOTICE OF FEDERAL LIEN**

Within 60 days after EPA receives the final payment required by Section VI (Payments) of this Consent Decree, EPA shall file a Release of Notice of Federal Lien in the Recorder's Office, Cook County, State of Illinois with respect to the Property. The Release of Notice of Federal Lien shall release the Notice of Federal Lien filed on July 6, 2004 with Document Number 0418848183 and shall not release any other lien or encumbrance which may exist upon the Property.



## **IX. COVENANTS NOT TO SUE BY PLAINTIFF**

14. CERCLA Covenants Not To Sue. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Steve Pedi: (i) pursuant to Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), with regard to the Removal Action and the Removal Action Costs; and (ii) pursuant to Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3), for any civil fines or punitive damages for Steve Pedi's alleged past failure to properly perform the Removal Action in response to an order issued by EPA under CERCLA Section 106(a), 42 U.S.C. § 9606(a). This covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payments) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Steve Pedi. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 22 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from the provision of false or materially inaccurate information. This covenant not to sue extends only to Steve Pedi and does not extend to any other person.

15. FDCPA Covenant Not To Sue. Except as specifically provided in Section X (Reservation of Rights by United States), the United States (on behalf of EPA) covenants not to pursue civil claims under the FDCPA against Settling Defendants with respect to any transfer that it alleged to be fraudulent as to a debt to the United States for the Removal Action or the Removal Action Costs.

## **X. RESERVATION OF RIGHTS BY UNITED STATES**

16. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenants Not to Sue by United States in Section IX. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Settling Defendants' ownership or operation of the Site, or upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendants; and
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

17. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Steve Pedi or the financial certification made by Settling Defendants in Section XIV, is false or, in an material respect, inaccurate.

#### **XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

18. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Illinois Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 20 (Waiver of Claims) and Paragraph 24 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 16 (c) - (e), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

19. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

20. Settling Defendants agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person if such person asserts any additional claims or causes of action relating to the Site against Settling Defendants after Settling Defendants' signature of this Consent Decree.

## **XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

21. Except as provided in Paragraph 20, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 20, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

22. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are the Removal Action and the Removal Action Costs. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

23. Settling Defendants agree that, with respect to any additional suit or claim for contribution brought against them for matters related to this Consent Decree after Settling Defendants’ signature of this Consent Decree, they will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon them. In addition, Settling Defendants shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section IX.

## **XIII. SITE ACCESS**

25. If the Site, or any other property where access and/or land/water use restrictions are needed to implement response activities at the Site, is owned or controlled by a Settling Defendant, that Settling Defendant shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial, or other activities at the Site;
  2. Verifying any data or information submitted to the United States;
  3. Conducting investigations relating to contamination at or near the Site;
  4. Obtaining samples;
  5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
  6. Assessing Settling Defendants' compliance with this Consent Decree; and
  7. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree; and
    - b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response activities to be performed at the Site.
26. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances, or other governmental controls are needed to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.
27. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

#### **XIV. CERTIFICATION REGARDING RECORDS**

28. Settling Defendants hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have:
- a. not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, reports, or other information relating to their potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against them regarding the Site, and that they have fully complied with any and all EPA requests for information regarding the Site and Settling Defendants' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and
  - b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth Steve Pedi's financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendants execute this Consent Decree.

## **XV. NOTICES AND SUBMISSIONS**

29. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

### **As to the United States:**

#### **As to DOJ:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-2-08218)  
P.O. Box 7611  
Washington, D.C. 20044-7611

#### **As to EPA:**

Connie L. Puchalski  
Section Chief  
U.S. EPA  
77 W. Jackson Blvd.  
Mailcode C-14J  
Chicago, IL 60604

### **As to Settling Defendants:**

Mark J. McAndrew  
Barnes & Thornburg LLP  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606

## **XVI. RETENTION OF JURISDICTION**

30. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

## **XVII. INTEGRATION/APPENDICES**

31. This Consent Decree and its appendices constitute the final, complete, and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the map of the Site;

“Appendix B” is a list of the financial documents submitted to EPA by Steve Pedi.

“Appendix C” is the original Complaint for Partition filed in the State Partition Action.

## **XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

32. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

33. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

## **XIX. SIGNATORIES/SERVICE**

34. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

35. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

36. Settling Defendants shall identify, on the attached signature pages, the name and address of an agent who is authorized to accept service of process by mail on their behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

**XX. FINAL JUDGMENT**

37. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

\_\_\_\_\_  
Hon. George M. Marovich  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Capital Tax Corp., et al.*, No. 04-C-4138, relating to the National Lacquer and Paint Superfund Site.

**FOR THE UNITED STATES OF AMERICA**

4/27/07  
Date

\_\_\_\_\_  
MATTHEW J. McKEOWN  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

\_\_\_\_\_  
Date

\_\_\_\_\_  
THOMAS A. BENSON  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

PATRICK J. FITZGERALD  
United States Attorney  
Northern District of Illinois

KURT N. LINDLAND  
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Northern District of Illinois  
219 S. Dearborn Street, Suite 500  
Chicago, IL 60604



\_\_\_\_\_  
Date

\_\_\_\_\_  
RICHARD C. KARL  
Superfund Director, Region 5  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd.  
Chicago, IL 60604

\_\_\_\_\_  
Date

\_\_\_\_\_  
CONNIE L. PUCHALSKI  
Section Chief  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd.  
Chicago, IL 60604

**FOR STEVE PEDI**

11 APR 07  
Date

Signature: \_\_\_\_\_  
Name (print): STEVE J. PEDI  
Title: \_\_\_\_\_  
Address: 7221 W ROOSEVELT RD  
FOREST PARK IL,  
60130

Agent Authorized to Accept Service on Behalf of Above-signed Party:

MARK J. McANDREW  
Name (print): BARNES + THORNBURG LLP  
Title: ATTORNEY  
Address: ONE N. WACKER DR.  
SUITE 4400  
CHICAGO, ILLINOIS 60606  
Ph. Number: 312 357 1313

4/11/07  
Date

**FOR FRANK PEDI**

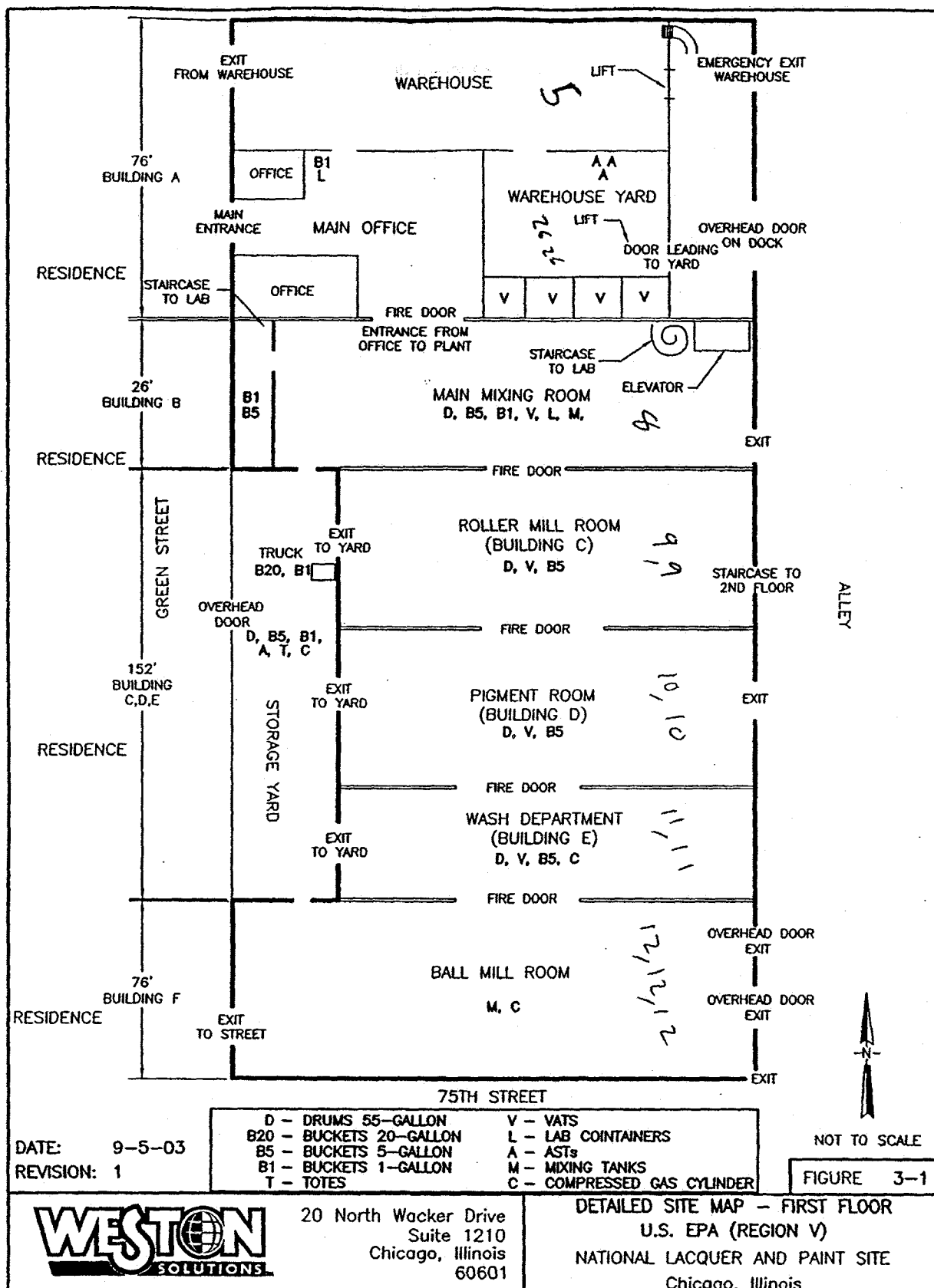
Signature: [Signature]  
Name (print): Frank J. PEDI  
Title: \_\_\_\_\_  
Address: 1116 Home Ave  
Oak Park, IL 60304  
\_\_\_\_\_  
\_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above-signed Party:

MARK J. McANDREW  
Name (print): BARNES & THORNBERG, LLP  
Title: ATTORNEY  
Address: ONE N. WACKER DR.  
SUITE 4400  
CHICAGO, ILLINOIS 60606  
Ph. Number: 312 357 1313

# **Appendix A:**

## **Map of the Site**



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## **Appendix B:**

### **Description of Steve Pedi Financial Information**

***Appendix B: Description of Financial Information***

U.S. EPA Statement of Financial Affairs - Individuals and attachments thereto, including:

- a. Documents reflecting transfer of Transferred Property from Steve Pedi to Frank Pedi in 2003
- b. Documents reflecting ownership of parcels at the Site
- c. March 15, 2005 statement for Park National Bank checking account
- d. January 31, 2001 and February 28, 2005 statements for MetLife money market account
- e. September 27, 2000 statement of stock holding in Park Place Entertainment Corporation
- f. March 5, 2005 statement of stock holding in Hilton Hotels Corporation
- g. March 31, 2005 statement and prior statements for Country Trust Bank IRA account
- h. February 5, 2001 statement for John Hancock life insurance policy
- i. 1995, 1997, 1998, 1999, 2000, and 2004 tax returns for American Wire Products
- j. Documents related to R. Eck & Sons, Inc., including:
  - (i) Documents regarding shares owned and shareholder meetings
  - (ii) 1999, 2000, 2001, 2002, and 2003 tax returns
- k. Documents related to National Lacquer Company, including:
  - (i) Documents regarding incorporation and stock distribution
  - (ii) 1996, 1998, 1999, 2000, and 2004 tax returns
- l. Documents related to February 14, 2002 land trust agreement with Forest Park National Bank & Trust Co.
- m. March 23, 2005 statement for Ameriquest mortgage
- n. Documents related to Forest Park National Bank & Trust Co. mortgage
- o. February 2005 statement for Washington Mutual mortgage

***Appendix B: Description of Financial Information***

- p. Documents related to February 3, 2003 loan from Frank Pedi to Steve Pedi
- q. Letter setting forth judgement from Circuit Court of Cook County against trust
- r. Documents related to sale of stock in Hewlett-Packard and Daimler Chrysler
- s. 1998, 1999, 2000, 2001 2002, 2003 personal tax returns for Steve Pedi



## **Appendix C:**

### **State Partition Action Original Complaint for Partition**

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS

WILLIAM G. LERCH )

Plaintiff, )

v. )

FRANK PEDI, HARDY REALTY )  
COMPANY, STATE STREET BANK AND )  
TRUST COMPANY, AS )  
CUSTODIAN/TRUSTEE, Unknown )  
Owners, and Non-Record Claimants, )

Defendants. )

Case No.

04 CH 1792

FILED  
OCT 15 PM 12:00  
CIRCUIT COURT  
WILL COUNTY, ILLINOIS

COMPLAINT FOR PARTITION

WILLIAM G. LERCH, the Plaintiff, by his attorneys, Thomas & Einarson, Ltd.,  
complaining of the defendants, FRANK PEDI, HARDY REALTY COMPANY, STATE  
STREET BANK AND TRUST COMPANY AS CUSTODIAN/TRUSTEE, Unknown Owners  
and Non-Record Claimants states as follows:

1. WILLIAM LERCH files this complaint to partition the hereinafter described  
property, and joins the following persons as defendants: FRANK PEDI; HARDY REALTY  
COMPANY; STATE STREET BANK AND TRUST COMPANY AS CUSTODIAN/TRUSTEE;  
Unknown Owners; and Non-Record Claimants.

2. WILLIAM LERCH and FRANK PEDI, are owners in tenancy in common of the  
real property located at 25640 W. 119th Street, Plainfield, Will County, Illinois 60544, and  
more fully described as follows:

That part of the East half of the Southeast quarter of Section 19, in Township 37 North,  
and in Range 9 East of the Third Principal Meridian, described as follows: Beginning at  
the Northwest corner of Lot 16, of Suburban Acres, being a Subdivision of part of the  
East half of the Southeast quarter of Section 19 and a portion of the East half of the  
Southeast quarter of Section 19 and a portion of the West half of the Southwest quarter

Initial case management set for

2-3-05 at: 8:30 am  
At River Valley Justice Center

of Section 20, in Township 37 North along a line parallel to the East line of said Section 19, 939.74 feet to a point in the Westerly line of Lot 2 of said Suburban Acres, thence Southeasterly along the Westerly line of Lots 2 to 9 of said Suburban Acres, 1046.54 feet to the Northeast corner of Lot 13 of said Suburban Acres, thence West along the North line of Lots 13 to 16 of said Suburban Acres, 451.12 feet to the point of beginning, also Lots 15 and 16, in Suburban Acres, a Subdivision of part of the Southwest Quarter of Section 20 and the Southeast quarter of Section 19, in Township 37 North, and in Range 9 East of the Third Principal Meridian, in Will County, Illinois

PERMANENT INDEX NOS.: 01-19-401-016; 01-19-401-015; 01-19-401-005

3. WILLIAM LERCH and FRANK PEDI gained their ownership based on the following series of transactions, all relating to the property legally described in paragraph 2:

a. On June 15, 1998 a Sheriff's deed from grantor, Will County Sheriff, to grantee, Norwest Mortgage, Inc., was recorded in the Office of the Will County Recorder as Document No. R98-67989.

b. On December 11, 1998 a warranty deed dated November 18, 1998 from grantor, Norwest Mortgage, Inc., to grantee, Steve PEDI, was recorded in the Office of the Will County Recorder as Document No. R98-149572.

c. On January 26, 2001 a quit claim deed dated August 7, 2000 from grantor, Steve PEDI, to grantees, Steve PEDI and WILLIAM LERCH, as tenants in common, was recorded in the Office of the Will County Recorder as Document No. R2001009618.

d. On October 3, 2003 a quit claim deed dated May 6, 2003 from grantor, Steve PEDI, to grantee, FRANK PEDI, was recorded in the Office of the Will County Recorder as Document No. R2003248748.

4. As of May 25, 2004 WILLIAM LERCH and FRANK PEDI each own an undivided one-half (1/2) interest as a tenant in common in the above-described property.

5. HARDY REALTY COMPANY is joined as a defendant because it holds an interest in the property by virtue of the following described mortgage:

- A. Nature of Instrument: Mortgage
- B. Date of Mortgage: December 8, 1998
- C. Name of Mortgagor: Steve PEDI
- D. Name of Mortgagee: HARDY REALTY COMPANY
- E. Date and Place of Recording: December 11, 1998 in the Office of the Will County Recorder
- F. Identification of Recording: Document No. R98-149573.
- G. Interest subject to Mortgage: Fee simple
- H. Amount of Original Indebtedness: \$159,920.00
- I. Legal description and common address of mortgaged property: See paragraph 2

6. STATE STREET BANK AND TRUST COMPANY AS CUSTODIAN/TRUSTEE is joined as a defendant because it holds an interest in the property by virtue of being the assignee of the following described mortgage:

- A. Nature of Instrument: Mortgage
- B. Date of Mortgage: February 1, 2001
- C. Name of Mortgagor: Steve PEDI
- D. Name of Mortgagee: Central Illinois Bank
- E. Date and Place of Recording: March 16, 2001 in the Office of the Will County Recorder
- F. Identification of Recording: Document No. R2001028597.
- G. Interest subject to Mortgage: undivided one-half interest of the property owned by Defendant FRANK PEDI formerly owned by Steve PEDI
- H. Amount of Original Indebtedness: \$166,000.00
- I. Legal description and common address of mortgaged property: See paragraph 2
- J. Date of Mortgage Assignment: undated
- K. Name of Mortgage Assignor: Central Illinois Bank
- L. Name of Mortgage Assignee: Washington Mutual Home Mortgage
- M. Date and Place of Mortgage First Assignment Recording: May 15, 2001 in the Office of the Will County Recorder
- N. Identification of Assignment Recording: R2001-058309
- O. Date of Second Mortgage Assignment: July 31, 2001
- P. Name of Mortgage Assignor: Washington Mutual Home Mortgage
- Q. Name of Mortgage Assignee: STATE STREET BANK AND TRUST COMPANY AS CUSTODIAN/TRUSTEE

- R. Date and Place of Mortgage Assignment Recording: February 2, 2002 in the Office of the Will County Recorder
- S. Identification of Assignment Recording: R2002-024535

7. The plaintiff is informed and believes that the reasonable value of the property is in excess of Five Hundred Thousand (\$500,000.00) Dollars.

8. Other than the mortgages described in paragraphs 3 and 4 of this complaint, the Plaintiff has no knowledge of encumbrances of record on the real property described above, and therefore is informed and believes that there are no unknown owners and non-record claimants, who have any legal or equitable interest in the aforesaid property.

9. Plaintiff is not in possession of the aforesaid real property.

10. Plaintiff is informed and believes that FRANK PEDI, one of the defendants, is in possession of the aforesaid real estate.

11. Plaintiff is informed and believes and therefore alleges that a partition of the real estate, rather than physical division, would be more equitable to the parties by virtue of the impracticality of physical division.

12. The prosecution by plaintiff of this partition action is for the common benefit of both the plaintiff and defendant FRANK PEDI.

13. Plaintiff has incurred and will continue to incur, attorney's fees and costs in connection with this matter.

WHEREFORE, WILLIAM G. LERCH, respectfully prays that this court enter the following orders:

- A. Selling the aforesaid real estate and dividing the proceeds between the parties according to their rights;
- B. Awarding reasonable attorney's fees and costs incurred by plaintiff in the prosecution of this action; and,
- C. For such further and other relief as this court deems equitable.

WILLIAM G. LERCH

By: One of his attorneys

**ATTORNEY'S STATEMENT**

The undersigned attorney states that (s)he is employed by Thomas & Einarson, Ltd. and represents the party who has signed the foregoing pleading, has read the foregoing pleading and that to the best of my knowledge, information, and belief, formed after reasonable inquiry, said pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that said pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation.

Thomas & Einarson, Ltd.

**By:**

George A Thomas, #0322971  
Teresa L. Einarson, #06198676  
Thomas & Einarson, Ltd.  
Attorneys for Plaintiff  
1213 Joliet Street, Suite F  
West Chicago, IL 60185  
Telephone: (630) 562-2280

**CLIENT'S VERIFICATION**

Under penalty of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that (s)he verily believes the same to be true. I further certify that I have read the foregoing pleading, including the "Attorney's Statement"; that the information that I provided to the attorney was used in the preparation of this pleading; that the pleading was prepared at my direction and with my consent as part of the attorney's duties in representing me; and, that the factual information I provided the attorney was and is true and accurate to the best of my knowledge and belief.

Dated: OCTOBER 12, 2004

WILLIAM G. LERCH